IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO 668 OF 2006

Pratap Mohan Rajput ....Applicant.

V/s

State of Maharashtra ...Respondent.

Mr. Sudhir B. Lambhate for the applicant.
Ms. S.V. Gajre, APP for State.

CORAM: V.M. KANADE, J.
DATE: 3rd March, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. This is an application for anticipatory bail. The applicant claims to be a businessman dealing in chemicals. It is alleged that he entered into an agreement with M/s Ganesh Enterprises who were Builders/Developers for the purchase of two flats at Ashray Apartment, Shivaji Nagar, Thane. After the agreement was executed, he applied for loan and the loan amount was paid by the Bank in favour of the builder.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that immediately after executing the said agreement with the builders, the applicant started paying monthly instalments to the

bank and there was no default in paying the said instalments. He submitted that the Investigating Officer called the present applicant to his Office and started making inquiries about the flat which was booked by him. It is alleged that he was informed that the builder has been arrested by the Police. It is submitted that the applicant is not concerned in any manner with the fraud having been committed by the developer/builder and, on the contrary, if at all any one is aggrieved, it is the applicant himself who is the victim of the alleged fraud committed by the builder. He submitted that, therefore, instead of entertaining the complaint of the applicant, the Investigating Officer wants to arrest the applicant in connection with the said offence which is registered against the developer/builder.

4. The learned APP appearing on behalf of the State, on the other hand, submitted that the documents which are annexed to the agreement which was executed by the applicant and the developer are the documents which are forged and fabricated. She submitted that, in fact, no such building by name Ashray Apartment is in existence as claimed by the applicant and that at the said place a building by name Dhanashri Apartment is in existence. She submitted that after the loan was

issued in the name of the builder, the builder had, in turn, paid an amount of Rs 3,89,000/- to the applicant which was deposited by the applicant in his bank account which was reflected in his bank statement. She submitted that the custodial interrogation of the applicant is essential.

5. I have given my anxious consideration to the submissions made by the applicant and the learned APP for the State. In my view, the applicant has made out a case for grant of anticipatory bail. There is no evidence to suggest that the amount which was deposited in the account which is opened by the applicant was given by the builder. The entry merely discloses that the amount was credited to his account on two different dates. The applicant in the Sessions Court had explained the said two transactions by stating on oath that they were business transactions and that certain amounts had been paid by him to one Anant Deshmukh who had returned the said amount. Further, if the intention of the applicant had been to defraud the bank, there was no reason for the applicant to pay the instalments regularly upto February 2006. The learned APP for the State was not in a position to explain this conduct on the part of the applicant. Thus, there is a prima facie material

to indicate that, possibly, the applicant himself may have been the victim of the fraud which has been committed by the builder. In any case, since the case involves the allegations of forgery of documents and the entire case is based on documentary evidence, in my view, the custodial interrogation of the applicant is not necessary. The applicant is a income-tax assessee and is carrying on regular business of trading in chemicals since last 10 years. The applicant is, therefore, not likely to abscond.

6. In the result, the application is allowed. The applicant in the event of his arrest in connection with C.R. No.440 of 2005 registered at E.O.W., Thane Crime Branch, be released on bail in the sum of Rs 5000/- with one or two sureties in the like amount. The applicant shall co-operate with the investigating agency. He shall report to E.O.W., Thane Crime Branch for a period of one week from 13/3/2006 between 11.00 a.m. to 5.00 p.m. The applicant, thereafter, shall report to the E.O.W., Thane Crime Branch as and when he is called. However, the applicant be called at the said Office during reasonable hours i.e. between 11.00 a.m. and 5.00 p.m.

7. Application is accordingly disposed of.

V.M. KANADE, J.